

TITLE 205
CHAPTER 2

REGULATIONS PERTAINING TO THE DEPARTMENT OF PUBLIC INSTITUTIONS

001 ADMINISTRATION. The Director or his/her designee shall:

001.01 Develop a comprehensive and integrated statewide plan for specialized services to persons with developmental disabilities in conjunction with persons with developmental disabilities and their families, state and local officials, designated advocates for such persons, service providers, and the general public;

001.02 Report biennially to the Legislature, the Governor, service providers, and the public on persons receiving services and progress made toward meeting requirements of the plan; and

001.03 Maintain a statewide registry of persons eligible for specialized services.

001.04 Develop a written policy which ensures the adequate and equitable distribution of fiscal resources based upon a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change and which also includes a plan for funding shortfalls; and

001.05 Administer all state and federal funds, as may be allowed by law, used by specialized programs in the state.

001.06 Promote the development of pilot projects of high quality, cost-efficient services provided by specialized programs.

001.07 Determine whether providers funded through the Division are providing programs that meet standards of performance as specified in 205 NAC 3, 4 and 5.

001.08 Coordinate the development of review teams designed to enhance the quality of specialized services.

002 WAIVER PROCEDURE. The Director of the Division may waive, unless otherwise specified in these regulations, the application of any regulation as requested by a provider.

002.01 To apply for a waiver, a provider/or designee shall submit a written request to the Director of the Division. It must include:

002.01A The citation of the specific part of the regulation to be waived;

002.01B Reasons for the waiver request;

002.01C If appropriate, activities or performance criteria to replace the requirement of the regulation and the date the provider is expected to attain compliance;

002.01D The signature of the administrator; and

002.01E Authorization from the provider's governing board/or designee to request a waiver.

002.02 The Director of the Division may make a determination to grant the waiver when the provider's proposed alternative performance meets the following conditions:

002.02A It is consistent with the intent of the specified regulation;

002.02B It conforms to good and customary administrative, management, and programmatic practices;

002.02C It protects the rights, health, safety and well-being of the persons receiving services; and

002.02D It does not relieve the provider of the responsibility to comply with other pertinent regulatory requirements.

002.03 The Director of the Division shall issue a decision regarding a waiver request by certified mail to the provider within thirty (30) calendar days following the receipt of the request. When a waiver is granted:

002.03A It shall be for a specified time period not to exceed the duration of the certification period for which the waiver is requested;

002.03B A provider shall receive written approval from the Director of the Division prior to implementation of a waiver; and

002.03C A provider shall meet all the conditions prescribed by the Director in granting the waiver. Failure to comply with the specified conditions voids the waiver.

002.04 A provider aggrieved by a decision to deny a waiver may appeal to the Director of the Department of Public Institutions pursuant to 205 NAC 2-003.

003 PROVIDER APPEAL PROCEDURE. A provider aggrieved by the application of any regulation shall be entitled to an appeal and may request a hearing with the Department of Public Institutions.

003.01 The aggrieved party shall request from the Director of the Department of Public Institutions, a Complaint and Request for Hearing Form.

003.02 The Director shall, within five days of the request, send a Complaint and Request for Hearing Form to the aggrieved party.

003.03 The aggrieved party shall complete and file the Form with the Director within thirty (30) days of the date of the decision being grieved.

003.04 The Department of Public Institutions shall, upon receipt of the Form, commence the hearing process pursuant to 207 NAC 1.

004 MONITORING AND ACCOUNTABILITY. The Division shall conduct site visits to determine a provider's compliance with the regulations of 205 NAC.

004.01 To enforce these regulations, the Director shall take whatever actions are lawfully allowed including decertification, and withholding of all or any part of funds distributed through the Department.

005 APPEALS BY PERSONS WITH DEVELOPMENTAL DISABILITIES. Any person with developmental disabilities or his/her legal representatives shall be entitled to file an appeal to the Department on an action or decision of the Department or any provider affecting his or her interests as provided for herein.

005.01 Appeals are limited to the application of regulations regarding, or on any actions or decisions by the Department or a provider on matters relating to:

005.01A The initiation, change or termination of eligibility for specialized services;

005.01B The refusal to initiate, change or terminate the determination of eligibility for specialized services;

005.01C The assessment or placement of the person; or

005.01D The provision of specialized services or records relating thereto.

005.02 Temporary, short-term, or emergency placements of a duration of not more than 45 days may not be appealed.

005.03 An appeal is commenced upon the Department with the filing of a complaint/petition by a person with developmental disabilities or his or her legal representative. The appeal is to the Director.

005.03A If the action or decision complained of is made by a provider, the Department, on its own motion, may elect to file a petition/complaint on behalf of the person with disabilities.

005.04 The petition/complaint must be filed with the Director within thirty (30) calendar days of the date of the issuance of the decision being objected to or the action complained of, or the decision becomes final as of the 30th day after its issuance.

005.04A In computing time prescribed or allowed by these rules or by any applicable statute in which the method of computing time is not specifically provided, the days will be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a State holiday, in which event the period runs until the end of the next day on which the office shall be open.

005.05 The petition/complaint must be in the form and manner prescribed by the Department for filing of these appeals.

005.05A The person with developmental disabilities or his/her legal representative, or a person acting on his/her behalf may request additional copies of the procedures for appeal and a form for the petition/complaint from the Department.

005.05A1 The request for forms and procedures may be made to the Director or Division Director at: Department of Public Institutions, Developmental Disabilities Division, P.O. Box 94728, Lincoln, NE 68509-4728, Phone (402) 471-2851.

005.05A2 The Department will send the requested forms and procedures within five (5) days of the receipt of the request.

005.05A3 A request for forms and procedures does not count as an appeal and will not toll the 30-day requirement for filing of appeals.

005.05B The petition/complaint must be signed at the end with the name of the individual bringing the action or the individual(s) authorized to act in such matters on behalf of the person. The mailing address and phone number of each person signing shall be included directly below the signature.

005.05C The complainant has the burden of clearly identifying and raising the issues on appeal in the petition.

005.05D The petition/complaint must:

005.05D1 Identify the decision maker(s) of the action or decision being appealed.

005.05D2 State the date of the action or decision being appealed.

005.05D3 Identify the statutes, rules and regulations, policies and procedures, or standards, if any, alleged to have been violated.

005.05D4 Include a statement of facts upon which appeal and claim for relief is based.

005.05D5 State the specific relief requested.

005.05E The petition/complaint shall be filed with the Department by mailing or hand-delivering to the Director of the Department of Public Institutions, P.O. Box 94728, Lincoln, NE 68509, located at the Central Office of the Department of Public Institutions at Folsom and West Prospector Place in Lincoln, Nebraska.

005.05E1 A petition/complaint on appeal is considered to be filed when received by the Department, with the date of said filing as:

005.05E1a The actual date of receipt if hand delivered, or

005.05E1b If mailed, on the date of mailing as evidenced by the postmark.

005.05F Failure to comply with any section of this Rule may result in dismissal of the appeal with prejudice or a return of the complaint/petition or other pleading, to the party for amendment, at the discretion of the Director and as the interests of justice dictate.

005.06 The respondent(s) shall file a response to the petition/ complaint on appeal with the Hearing Officer appointed by the Department within fourteen (14) calendar days after receipt of the petition/complaint on appeal.

005.07 Unless as otherwise specified in these rules and regulations or by statute, all motions, notices, pleadings, orders, or other papers may be served personally or by mail to all the parties by the Hearing Officer and by all parties.

005.07A All parties who have entered their appearances in any proceeding shall be served with all notices, motions, pleadings, orders or other papers filed on said matter by the Hearing Officer and all parties. Service upon an attorney of record shall be deemed to be service upon the party represented by such attorney.

005.07B At the time any pleading or document is mailed or delivered to the Director or hearing officer for filing it shall contain a certificate of service endorsed thereon, showing the time, place and manner of service on all parties.

005.08 Upon the receipt of a petition/complaint on appeal, the Department shall assign the matter to a hearing officer employed, retained, or approved by the Department who shall receive all subsequent pleadings and shall conduct the hearings on appeal.

005.08A Hearing officers shall not be persons who are employees or officers of a local agency which is involved in providing services to the person who initiated the petition/complaint, or on whose behalf the petition/complaint was initiated.

005.08B A person who otherwise qualifies to conduct a hearing shall not be considered an employee of the agency solely because this person is paid by the agency to serve as a hearing officer.

005.08C No hearing officer shall participate in the hearing of an appeal in which the hearing officer has a conflict of interest.

005.08D Challenges to the interest of any hearing officer may be made to the hearing officer on, or prior to, the date set for hearing. Such challenge as to the interest of the hearing officer may be heard and decided immediately by the hearing officer or in his or her discretion referred to the Director. In the event the challenge is not heard immediately or is referred to the Director, the hearing of the appeal shall be continued until the disposal of such challenges. The hearing officer shall cause all parties to be notified of the new date set for such hearing by mailing the notice to all parties to the appeal at least five days before the date set for the hearing.

005.08E The Director has the authority for good cause to substitute hearing officers.

005.08F The removal or substitution of a hearing officer may be considered good cause for a continuance.

005.08G A hearing officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He/she shall have all the powers necessary to that end, including the following powers:

005.08G1 To administer oaths and affirmations;

005.08G2 Issue subpoena as authorized by law to compel the appearance of witnesses and the production of relevant evidence.

005.08G3 To compel discovery and to impose appropriate sanctions for failure to make discovery;

005.08G4 To rule upon offers of proof and receive relevant, competent, and probative evidence;

005.08G5 To regulate the course of the proceedings in the conduct of the parties and their representatives;

005.08G6 To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purpose;

005.08G7 To consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings, including the application of, or exclusion from, the stay of an action or decision on appeal;

005.08G8 To fix the time for filing briefs;

005.08G9 At the request of either party for good cause shown, the hearing officer may grant specific extensions of time beyond the period of forty-five (45) calendar days;

005.08G10 To produce evidence on his or her own motion;

005.08G11 To exclude people from the hearing;

005.08G12 To see that facts are fully developed including witness examination and cross examination, if needed;

005.08G13 Take any other action consistent with the purpose of the law as administered by the Department and consistent with these rules

005.08H At the completion of the hearing on appeal, the hearing officer shall prepare a report, decision and order based on the evidence presented containing findings of fact and conclusions of law. Within forty-five (45) calendar days after the receipt of a request for hearing, the hearing officer shall prepare the final report, decision and order directing such action as may be necessary, with the following exceptions:

005.08H1 Unless said time period has been extended pursuant to continuances granted for good cause shown.

005.08H2 If the matter is settled or resolved prior to hearing by agreement of the parties or otherwise, the circumstances will be presented in writing to the hearing officer who will consider same and issue an order of dismissal on the appeal if warranted.

005.08I The report, decision and order of the hearing officer shall be delivered to each party or attorney of record by certified mail and delivered to the Director.

005.09 The filing of a petition/complaint on appeal shall operate to stay the decision or action which is the subject matter of appeal and the person with developmental disabilities shall remain in his or her current placement unless:

005.09A The current placement is a temporary placement of a duration not to exceed forty-five (45) days and made pursuant to a medical or other emergency and said emergency ceases to exist.

005.09B A medical or other emergency arises necessitating a change in service or placement.

005.09C The health or safety of the person with developmental disabilities would be endangered by the continued placement.

005.09D The health or safety of other persons would be endangered by the continued placement.

005.10 All disputes involving the application of, and exclusion from, the stay pending appeal and the continuation of, or cessation of, current placements of the person with disabilities pending appeal will be resolved by:

005.10A Agreement of all of the parties.

005.10B Decision of the hearing officer upon motion by one of the parties.

005.11 The date, time and location of the hearing on appeal shall be set by the hearing officer.

005.11A The hearing officer shall attempt to arrange a time and place for the hearing that is convenient to all parties.

005.11B The rules of evidence will not apply unless invoked in writing by either party at least three (3) business days before the hearing. The hearing officer shall admit relevant and material evidence, but shall exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious.

005.11B1 Any request for the rules of evidence shall include the requesting party's agreement to be liable for the payment of costs, including the cost of court reporting services which the requesting party shall procure for the hearing.

005.11C At the hearing the parties shall present evidence on the issues raised in the pleadings.

005.11C1 The complainant has the burden of persuasion throughout the hearing and must prove his/her case by a preponderance of the evidence.

005.11C2 The complainant has the burden of going forward with the presentation of evidence first.

005.11C3 The burden of production of evidence then shifts to the respondent(s).

005.12B Present evidence and confront, cross-examine and compel the attendance of witnesses;

005.12C Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) calendar days before the hearing;

005.12D Obtain a written or electronic verbatim record of the hearing at that party's cost; and

005.12E Obtain written findings of fact and decisions.

005.13 Witnesses may be compelled to attend, or produce evidence, by a subpoena issued by the hearing officer and shall be entitled to the fees and expenses allowed in District Court.

005.13A Failure to respond to subpoena shall be certified by the hearing officer to the District Court of Lancaster County for enforcement or for punishment for contempt of the District Court.

005.13B Each party shall be responsible for the payment of witness fees and mileage, including the fees and expenses of expert witnesses that it calls.

005.13C Department personnel will be provided as witnesses upon receipt of a subpoena without payment of witness fees or mileage fees.

005.14 Informal resolution may be made by and between the parties prior to the filing of a petition/complaint on appeal of any matter or issue which may be the subject matter of an appeal.

005.14A The informal resolution process may be initiated by an aggrieved person by contacting the Division Director in writing and requesting an informal resolution meeting.

005.14B The Division Director or designee will set up a meeting as soon as practicable between the necessary parties.

005.14B1 The Division Director or designee shall attempt to arrange a time and place for the meeting that is convenient to all parties deemed necessary for the meeting.

005.14B2 Providers and/or their designated employees are required to attend a resolution meeting if required by the Department.

005.14C At the discretion of the Division Director or designee, a formal mediation process may be utilized in conjunction with, or in the place of, an informal resolution meeting process.

005.14C1 Costs of the mediator will be paid by the Department.

005.14D The time it takes to utilize the informal resolution meeting process or mediation will not count against the thirty (30) days to file an appeal of a decision or action under 205 NAC 2-005.

005.14E Informal resolution meetings or mediation processes will not be admissible in evidence or become part of the record on appeal.

005.15 After the filing of the petition/complaint on appeal, the parties at a pre-hearing conference, or at any other time, may explore proposed settlements and if agreement is reached by all parties, it must be committed to writing and submitted to the hearing officer.

005.15A The proposed settlement agreement which constitutes the offer of settlement, shall contain:

005.15A1 An admission of all jurisdictional facts;

005.15A2 Provisions that the allegations of the petition/ complaint are resolved by the consent agreement and order;

005.15A3 A description of the actions which the parties have agreed will be performed in order to settle the matter, as well as a timeframe in which all such actions are to be completed;

005.14A4 The signature of all parties.

005.15B Mediation may be initiated after the filing of the petition/complaint upon the written request of any party to the Department. The request shall be accompanied by a motion for continuance signed by the party.

005.15B1 Formal mediation is at the discretion of the Division Director.

005.15B2 An informal resolution meeting may be utilized in lieu of formal mediation at the discretion of the Division Director.

005.15B3 If formal mediation is utilized, the cost of the mediation will be paid by the Department.

005.15B4 If agreement and resolution is reached by an informal resolution or mediation it must be written in compliance with 005.15A and submitted to the hearing officer for approval.

005.15C Requests for mediation or informal resolution made after the filing of a complaint/petition on appeal shall, if granted, constitute good cause for a continuance.

005.15D Neither rejected offers of settlement nor the fact of the proposal of offers of settlement including proposed consent agreements, orders, and motions requesting settlement or mediation are admissible in evidence or become a part of the record.

005.15E Upon review, the hearing officer will dismiss the appeal upon acceptance and approval of the settlement agreement and will notify all parties involved. Such a dismissal will be deemed to be with prejudice.

005.16 Any party aggrieved by the findings, conclusions, or final decision and order of the hearing officer shall be entitled to judicial review under Neb. Rev. Stat. §§ 83-1224. Any party of record also may seek enforcement of the final decision and order of the hearing officer, if necessary, through the process of judicial review.

005.16A When no petition for judicial review or other civil action is filed within thirty (30) calendar days after service of the final decision and order on all of the parties, the hearing officer's final decision and order shall become effective.

005.16B Proceedings for enforcement of a hearing officer's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of the county of residence of the person with developmental disabilities within one (1) year after the date of the hearing officer's final decision and order.

005.16C The filing of a petition for judicial review shall operate to stay the enforcement of the final decision and order of the hearing officer.

005.16D While judicial proceedings are pending and unless the parties otherwise agree, the person with developmental disabilities shall remain in his or her current placement. If the health or safety of the person with developmental disabilities or of other persons would be endangered by delaying a change in placement, the service provider may make such change without prejudice to the rights of any party.

005.17 Copies of 205 NAC 2-005 will be given to persons with developmental disabilities and their legal representative upon request.

005.18 No waiver of 205 NAC 2-005 or its parts shall be granted.

006 **QUALITY REVIEW TEAMS.** The Director shall promote quality services by coordinating the development of quality review teams. The Department fulfill this function by using an independent Contractor. Each quality review team shall:

006.01 Conduct an annual quality-of-life survey of persons receiving services within the region, to include interviews with the legal representative, the parent(s) (if the person receiving services is a minor), and/or the designated advocates, as appropriate;

006.02 Receive, investigate and hear complaints and/or positive comments related to quality-of-life issues from persons receiving services, legal representative, the parent(s) (if the person receiving services is a minor), and/or the designated advocates; and

006.03 Make recommendations concerning quality of life issues to the agency, provider, Department of Public Institutions, Department of Social Services, Department of Health, and/or persons receiving services, as appropriate.

006.04 Consist of four members appointed by the Director of the Department and shall include:

006.04A At least one person with a developmental disability;

006.04B At least one parent or other close relative of a person with a developmental disability; and

006.04C At least one person who is neither a person with a developmental disability nor a close relative of such a person.

006.05 No employee of any governmental agency or instrumentality or any specialized program shall be eligible to be appointed to a team.

006.05A No quality review team member shall participate in any survey in which he/she may have a conflict of interest.

006.06 Members shall be chosen from nominations submitted by advocacy groups, providers, elected officials or other groups or by persons interested in developmental disability services who are located in the service area of the developmental disability region.

006.07 For each quality review team:

006.07A One member shall be appointed for a term of one (1) year;

006.07B One member shall be appointed for a term of two (2) years;

006.07C One member shall be appointed for a term of three (3) years; and

006.07D One member shall be appointed for a term of four (4) years.

006.07E Thereafter, successor appointees shall serve for terms of four (4) years.

006.07F In case of a vacancy, the Director of the Department of Public Institutions shall appoint a successor for the unexpired term.

006.08 Members shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in Neb. Rev. Stat. §§ 81-1174 to 81-1177.

006.09 No waiver of 205 NAC 2-006 or its parts shall be granted.

007 **SERVICE COORDINATION.** The Director of the Division shall establish Local Field Offices throughout the state to provide a statewide system of service coordination for persons with developmental disabilities.

007.01 Local Field Office responsibilities include:

007.01A Timely and accurate determination of eligibility.

007.01B Using an objective assessment process to determine the type and amount of supports and/or services necessary to meet the needs of persons who are eligible to receive specialized services.

007.01C Gathering additional information and collaborating with the person receiving services, the legal representative of that person, the parents (if the person is a minor) and/or chosen advocate(s) to explore choices available to the person receiving services.

007.01D Participating in the individual/family meeting with the eligible person, the parents (if the person is a minor), the legal representative and/or chosen advocate(s), to problem-solve and strategize on methods to enable the eligible person to achieve his/her personal goals, pursue interests, determine provider preference, and establish the membership of the Interdisciplinary Team. The meeting shall be held prior to admission to services and up to ninety (90) calendar days prior to the Annual IPP/IFSP every year thereafter.

007.01D1 The regulations specified in 205 NAC 2-005 for Appeals by Persons with Developmental Disabilities shall be reviewed during this meeting and a copy of those procedures provided, by the Service Coordinator, to the eligible person and his/her legal representative. Additional copies of the regulations will be provided upon request thereafter.

007.01D1a the meeting notes shall contain documentation that the regulations specified in 205 NAC 2-005 were reviewed during the meeting.

007.01E Arranging for the provision of supports and services identified in the individual/family meeting and the IPP/IFSP.

007.01E1 The provision of services and supports is contingent upon the continued availability of funds for the supports and services.

007.01F Participating in Individual Program Plan/Individual and Family Support Plan development by:

007.01F1 Scheduling, coordinating, and chairing the IPP/IFSP meeting;

007.01F2 Ensuring that the supports and/or services identified in the IPP/IFSP reflect the goals identified in the individual/family meeting;

007.01F3 Identifying available resources; and

007.01F4 Recommending service providers who should be involved in the IPP/IFSP planning process.

007.01G Actively monitoring the provision of supports and/or services identified in the IPP/IFSP by:

007.01G1 Periodically observing the delivery of services;

007.01G2 Consulting with persons receiving supports and/or services, the legal representatives, the parents (if the person is a minor), and the chosen advocate regarding their satisfaction;

007.01G3 Following up observations with a written report to providers;

007.01G4 Meeting with providers to discuss progress in Program Plan implementation;

007.01G5 Consulting with providers to determine how to improve supports and/or services, resolve problems; and

007.01G6 If indicated, reconvening the IPP/IFSP team to review results of monitoring and determine whether changes are needed.

007.01H Responding to consumer crises quickly by:

007.01H1 Maintaining an active liaison with local Adult and Child Protective Services Units as well as other local agencies, including but not limited to law enforcement, public education, mental health and social services;

007.01H2 Establishing emergency service authorization policies and procedures;

007.01H3 Working with persons receiving supports and/or services on an ongoing basis to resolve problems to proactively prevent potential crisis situations; and

007.01H4 Helping persons receiving supports and/or services find alternatives which may permanently resolve the problems at hand.

007.01I Maintaining an active liaison with the community-based developmental disabilities service providers, other human service agencies, local school districts, advocacy/consumer organizations and other entities to coordinate supports and/or services and promote cooperation.

007.01I1 Service Coordinators will also keep provider agencies apprised of changes in the circumstances of the person.

007.01J Maintaining records of persons authorized to receive funding to facilitate the planning, monitoring, and assessment of supports and/or services essential for the development and implementation of the IPP/IFSP.

Each record shall contain:

007.01J1 Documentation that eligibility was determined upon initial intake;

007.01J2 Physical, dental, visual, and auditory examination results completed no more than one (1) year prior to admission;

007.01J3 A copy of the certificate of birth;

007.01J4 A copy of guardianship documents, if applicable;

007.01J5 A copy of a power of attorney, if applicable;

007.01J6 Records of previous supports and/or services, which may include family and social history, information release forms, source of income, the source of referral, programmatic/behavioral history, and medical history, to include records of psychotropic medications, allergies, immunizations, medical conditions/diagnosis, current medications, surgeries and hospitalizations;

007.01J7 Demographic data which is reviewed annually and updated as necessary;

007.01J8 A current photograph of the eligible person;

007.01J9 The name and telephone number of the person(s) to be notified in the event of an emergency which must include the legal representative (if applicable); and

007.01J10 The current physician's name and telephone number.

007.01K Maintaining a file for each person authorized for funding. Each file will contain:

007.01K1 Copies of the Individual/Family Meeting, Initial, Semi-Annual, Annual, and Special IPP narratives.

007.01K1a Fourteen (14) calendar days after all habilitation programs are submitted to the Local Field Office by the provider, a copy of the Annual IPP/IFSP will be disseminated to the eligible person, the provider, and all other interdisciplinary team members.

007.01K2 Copies of all habilitation programs for the current annual program year;

007.01K3 Copies of current assessments and/or assessment summaries; and

007.01K4 Documentation of any change of status forms.

007.01L Documenting monthly contacts with the person receiving services.

007.01M Completing Termination Summaries for persons at termination of services. Termination Summaries shall include:

007.01M1 The date of termination;

007.01M2 A concise summary addressing the progress of the person and events that occurred during the period of service to the person;

007.01M3 The reason for termination;

007.01M4 Recommendations and plans for future programming, if applicable; and

007.01M5a Copies of the Termination Summary shall be disseminated to the person who was receiving services, the legal representative, the parent (if the person is a minor), the chosen advocate, and the provider as appropriate within thirty (30) calendar days of termination.

007.01N Providing information to the policymakers of the Department regarding developmental disability services by:

007.01N1 Identifying eligible persons;

007.01N2 Tracking eligible persons as they move through the system;

007.01N3 Documenting demographic, service utilization, and budget information; and

007.01N4 Identifying gaps in the service system.

008 **CONFIDENTIALITY.** All information in the records of eligible persons is considered confidential. No information from the records will be released without:

008.01 A specific and written authorization.

008.02 Authorization for release of information must:

0002A Be signed and dated by the eligible person, the legal representative, or parent (if the person is a minor);

008.02B Be limited to that information required to fulfill the stated purpose;

008.02C Prohibit the use of information for other than the stated purpose; and

008.02D Prohibit redisclosure by the recipient to other parties except as stated in the purpose of the authorization.

008.03 Personal information concerning eligible persons shall always be discussed in a professional manner. The dignity and privacy of the eligible person shall be respected.

009 **QUALITY IMPROVEMENT.** The Developmental Disabilities Division will develop and implement an internal quality improvement plan to:

009.01 Monitor the performance of each Local Field Office; and

009.02 Identify and implement the steps necessary to enhance systemwide performance.

009.02A The Local Field Office will address any problems or issues which emerge as a result of this internal review process or as a result of reviews by the Regional Quality Review Teams.

010 PUBLIC EDUCATION AND INFORMATION. The Division shall participate in public education and information activities that are designed to facilitate the social integration and acceptance of individuals with developmental disabilities.

010.01 Information shall be provided to the public on supports and/or services which are available for persons with developmental disabilities as well as the needs of that population which remain unmet. Methods may include publicity programs, a speaker's bureau, newsletters, fact sheets describing program components, brochures, and audiovisual materials.

010.2 The Developmental Disabilities Division shall maintain records of all public education and information activities.

011 ELIGIBILITY FOR DEPARTMENT-ADMINISTERED FUNDS. The Department shall authorize funding for specialized supports and/or services and/or service coordination to persons found to be eligible for funding of supports and/or services.

011.01 To be eligible for specialized supports and/or services funded by the Department, the person requesting must:

011.01A Be a resident of the State of Nebraska.

011.01B Have a developmental disability as defined by Neb. Rev. Stat. § 83-1205 and 205 NAC 1-001.19.

011.01C Have been determined by the Department to require specialized supports and/or services.

011.01D The presence of a diagnosis of a mental illness for a person who also has a developmental disability as defined in Neb. Rev. Stat. § 83-1205 and 205 NAC 1-001.a shall not render such an individual ineligible to receive developmental disabilities services.

011.02 The provision of funding for specialized supports and/or services and service coordination to eligible persons by the Department is contingent upon the appropriation and availability of funding.

011.03 Specialized supports and/or services funded through the Department will not be available when the assessed needs of the person with developmental disabilities may be met through the use of nonspecialized supports and/or services as determined by the Department.

011.04 Funding for specialized supports and/or services may be denied by the Department for one or more of the following reasons:

011.04A The person requesting specialized services fails to meet the eligibility criteria specified in 205 NAC 2-011.01 and its subparts.

011.04B Adequate funding is not appropriated.

011.04C The person requesting specialized supports and/or services and/or his/her legal representative has not supplied information required by the Department.

011.04D The person requesting specialized supports and/or services or his/her legal representative has not signed the forms and releases required by the Department.

011.04E The requested provider of the specialized supports and/or services fails to meet the standards or fulfill requirements of the Department.

011.04F The person requesting specialized supports and/or services fails to cooperate with, or refuses the supports and/or services to be funded by the Department.

011.04G The needs of the person requesting specialized supports and/or services may be met through the utilization of natural supports or non-specialized services, as determined by the Department.

011.04H Funding for requested specialized supports and/or services is available from other sources.

011.05 The Department provides service coordination to each person found by the Department to be eligible.

011.06 The Department authorizes funding for specialized supports and/or services to persons determined to be eligible who, on or after September 7, 1993, graduate from high school and reach the age of 21.

011.07 The determination of eligibility of individuals requesting specialized supports and/or services and service coordination funded by the Department is made by service coordination personnel in the Local Field Office.

011.08 The determination of the type and amount of specialized supports and/or services which will be funded through the Department for eligible persons is made by service coordination personnel in the Local Field Office.

011.09 In authorizing Department funding for those eligible for specialized supports and/or services, service coordination personnel will use an objective assessment to determine the individual's needs and the amount and type of specialized supports and/or services needed, which includes the need for service coordination. The following priorities for funding authorization are used by the Department in determining prioritization of individuals:

011.09A Protection from imminent physical harm caused by:

011.09A1 Abuse and neglect.

011.09A2 The need for emergency medical care.

011.09A3 The need for food, housing and/or clothing on an emergency basis.

011.09A4 The need for immediate intervention to prevent physical harm.

011.09B Protection from ongoing physical harm, not of an emergency nature, caused by insufficient food, housing, clothing, medical care, and/or lack of protection from abuse and neglect.

011.10 Once funding has been authorized for specialized supports and/or services for persons meeting the priorities set forth in 205 NAC 2-011.09A and B above, funding authorization for similarly situated eligible persons is determined by the following:

011.10A The date that eligibility was determined for specialized supports and/or services funded by the Department; or

011.10B For persons already receiving specialized supports and/or services funded by the Department, the date upon which the request for new and/or additional specialized supports or services was made; or

011.10C The date specified by the eligible person upon which they request specialized supports and/or services to begin.

012 DATA REGISTRY SYSTEM. All eligible persons requesting and/or receiving specialized supports and/or services funded by the Department are included in the data registry.

012.01 The data registry is maintained by the Department and consists of a data collection, maintenance, and information retrieval system.

012.02 The data registry system will be used by the Department to:

012.02A Track the specialized support and/or service needs of persons with developmental disabilities;

012.02B Plan for future specialized support and/or service needs of persons with developmental disabilities; and

012.02C Budget for future specialized support and/or service needs of persons with developmental disabilities.

012.03 Information for each eligible individual listed in the data registry system may include:

012.03A Demographics;

012.03B Individual diagnosis;

012.03C Eligibility factor(s);

012.03D Financial information;

012.03E Family/legal representative information.

012.03F The objectively assessed needs for specialized supports and/or services, specifying amount and type.

012.04 Information in the Registry is considered confidential and will not be released without the proper authorization as provided by law.

013 FINANCIAL RESPONSIBILITY. The Department shall utilize 202 NAC 1 for assessing the ability of persons requesting/receiving Department funded specialized supports and/or services to participate in the cost of such specialized supports and/or services.

003.01 Appeals on ability to pay determination shall be pursued in the same manner and method as in 205 NAC 2, Section 005, subject to the specific requirements of Neb. Rev. Stat. § 83-374.

Source: Neb. Rev. Stat. § 83-109

Neb. Rev. Stat. § 83-227.01

Neb. Rev. Stat. § 83-363 through 83-374

Neb. Rev. Stat. § 83-1202

Neb. Rev. Stat. § 83-1209 through 83-1211

Neb. Rev. Stat. §§ 83-1212 through 83-1224

Neb. Rev. Stat. § 83-1226

Neb. Rev. Stat. § 84-913 through 84-916